IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3394 OF 2005

Jayantilal Bhimshi Gangar & ors. ... Applicants.
Versus.
The State of Maharashtra. ... Respondent.

Shri A.P.Mundargi i/by Shri Pavan Vira for the Applicants.

Ms.Rajashree Gadhavi, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 16th June, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. This is an Application for anticipatory bail filed by the Applicants. C.R. is registered against the Applicants bearing No.124 of 2005 at Bhoiwada Police Station. The first informant is one Chandrakant Mahadeo Kamble. The F.I.R. is registered against the Applicants and two other persons who are allegedly the partners of M/s.Gangar Developers. The learned Sessions Judge rejected the Application filed by the Applicants by holding that in view of section 18 of the Schedule Castes and Schedule Tribes (Prevention of Atrocity) Act, 1989 (hereinafter referred to as the said Act of 1989) provisions of Section 438 of the Code of Criminal Procedure cannot be invoked.

2. Learned Counsel for the Applicants submitted that

the F.I.R. is registered alleging offence under section 3(1)(v) of the said Act of 1989. He invited my attention to the assertions made by the Complainant in this Complaint dated 14th May, 2005. He pointed out that on plain reading of the said complaint there is no allegation of commission of offence under the said Act of 1989 against the Applicant No.1 and the Applicant No.3. He stated that the allegation of offence which may at highest attract clause (x) of Sub-section 1 of section 3 of the said Act of 1989 is against Surendra who has not approached this Court. He stated that the allegation in the complaint regarding clause (v) of Sub-section 1 of Section 3 of the said Act of 1989 is against M/s.Gangar Developers and not against any individual partner. He submitted that the said allegation is demonstrably false. He invited my attention to the N.C. filed by the Complainant on 11th May, 2005. He also invited my attention to other documents such as Agreement entered into in favour of the Complainant by Applicant No.1 and 2 and affidavit of the tenants in the property.

3. The learned A.P.P. appearing for the State on instructions of the concerned investigating Officer stated that in so far as the Applicants Nos.1 and 3 are concerned there is no specific allegation on record regarding commission of offence under the said Act of 1989. She, however, submitted that in so far as the

Applicant Nos.2 and 4 are concerned, they were present on 11th May, 2005 and the allegation made in the Complaint is against the partners of M/s.Gangar Developers who were present on 11th May 2005. She submitted that there is a clear allegation of commission of offence under clause (v) of sub-section 1 of section 3 of the said Act of 1989 against the Applicant Nos.2 and 4.

4. I have considered the rival submissions. If no case of commission of offence under the said Act of 1989 is admittedly made out against the Applicant Nos.1 and 3, surely bar created by section 18 of the said Act of 1989 cannot be invoked for defeating the right available under section 438 of the said Code. Hence, so far as the Applicant Nos.1 and 3 are concerned, the bar created by section 18 of the said Act of 1989 will not apply and obviously, therefore, they are entitled to anticipatory bail as in the F.I.R. except for offence under the said Act of 1989 and under section 341 of the IPC no other offence is alleged.

5. At this stage, learned Counsel appearing for the Applicant Shri Mundargi stated that this Court may not record any finding as regards prayer made by the Applicants Nos.2 and 4 and the said Applicants be granted the reasonable time to surrender before the appropriate Court with liberty to make appropriate

Application for grant of bail. He submitted that the Application may be ordered to be decided immediately.

6. The said prayer made is reasonable and, therefore, I have not adjudicated upon the prayer made by the Applicants Nos.2 and 4 for anticipatory bail on merits.

7. Hence I pass the following order:

(i) In the event of the Applicants Nos.1 and 3 being arrested in connection with C.R.No.124 of 2005 registered at Bhoiwada Police Station, the Applicants shall be released on bail subject to furnishing P.R.Bond in the sum of Rs.10,000/- each with one or two sureties in the like amount. The Anticipatory Bail is granted subject to condition that the said Applicants will attend the Police Station for investigation as and when called upon and will co-operate for investigation. The order will enure to the benefit of the Applicant Nos.1 and 3 till charge sheet is filed.

(ii) Time of four weeks if granted to the Applicants Nos.2 and 4 to surrender before the appropriate Court. After surrender,

the Applicant Nos.2 and 4 will be at liberty to take out appropriate Application for Bail which shall be decided by the concerned Court immediately.

(iii) Till the time the Applicants Nos.2 and 4 surrender, they will co-operative with the investigating Officer and will remain present as and when called upon to do so. The Applicants Nos.2 and 4 will give advance notice to the concerned Police Station of the date on which they propose to surrender before the appropriate Court.

(iv) The Application is disposed of in the above terms.

(v) All questions on merits are kept open.

(vi) Parties to act upon an authenticated copy of this order.

Judge.